

**KELLEY DRYE & WARREN LLP**

A LIMITED LIABILITY PARTNERSHIP

**1200 19TH STREET, N.W.**

**SUITE 500**

**WASHINGTON, D.C. 20036**

(202) 955-9600

FACSIMILE

(202) 955-9792

www.kelleydrye.com

NEW YORK, NY

TYSONS CORNER, VA

CHICAGO, IL

STAMFORD, CT

PARSIPPANY, NJ

BRUSSELS, BELGIUM

AFFILIATE OFFICES

JAKARTA, INDONESIA

MUMBAI, INDIA

BRAD E. MUTSCHELKNAUS

DIRECT LINE: (202) 955-9765

EMAIL: bmutschelknaus@kelleydrye.com

November 24, 2004

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
Room TW-A325  
445 12th Street, SW  
Washington, DC 20554

Re: CC Docket No. 01-338, WC Docket No. 04-313

Dear Ms. Dortch

On November 18, 2004, Carl Grivner, Heather Gold and Chris McKee of XO Communications ("XO"), and I met with Commissioner Kevin Martin and his legal assistant Dan Gonzalez. During the discussion, we made the same points as are set forth in the Loop and Transport CLEC Coalition comments and reply comments in the above-referenced proceedings. We emphasized in particular that there is ample evidence in the record to justify the adoption of a national finding of impairment for DS1 loops, or at the very least a test that requires the presence of two competitive wholesale providers of DS1 loops. We explained that the simple fact that CLECs self supply fiber to a building, is inadequate to prove a lack of impairment for carriers seeking to provide DS1 level services. Such retail fiber deployment is not evidence of the existence of wholesale options; moreover, fiber deployment to one customer in a building is not evidence that all customers in the building can be serviced by competitive. We also explained why the mass market for broadband services is limited to residential and home office costumers.

KELLEY DRYE & WARREN LLP

Ms. Marlene H. Dortch  
November 24, 2004  
Page Two

The attached presentation was distributed at the meeting. Pursuant to the Commission's rules, please include a copy of this letter and presentation in the record of the docket mentioned above.

Sincerely,

A handwritten signature in black ink, appearing to read "B. Mutschelknaus", with a long horizontal flourish extending to the right.

Brad E. Mutschelknaus

cc: Dan Gonzalez



# **Telecom Policies Need to Continue to Promote Competitive Options for Small Businesses**

# Small Businesses Must Continue to Have Access to Competitive Options



- Small businesses spending less than \$500 on telecom purchase 4 business lines, slightly larger firms only 7 lines.

## SBA/Telenomic Research - Survey Spending

<u>0-4 Employees</u>		
	<u>Quantity/Lines</u>	<u>Monthly Spending</u>
Local	1.9	\$102.71
LD	1.9	\$53.70
Local + LD	1.9	\$153.20
Wireless	1.2	\$72.70
DSL	0.19	\$7.27
Cable Modem	0.26	\$9.07
Dial-Up	0.44	\$10.20

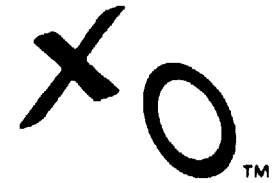
<u>5-9 Employees</u>		
	<u>Quantity/Lines</u>	<u>Monthly Spending</u>
Local	3.95	\$208.65
LD	3.95	\$125.15
Local + LD	3.95	\$344.96
Wireless	2.32	\$180.61
DSL	0.14	\$8.48
Cable Modem	0.56	\$18.53
Dial-Up	0.49	\$10.04

<u>10-499 Employees</u>		
	<u>Quantity/Lines</u>	<u>Monthly Spending</u>
Local	6.76	\$396.82
LD	6.76	\$476.24
Local + LD	6.76	\$694.20
Wireless	5.31	\$448.21
DSL	0.47	\$27.87
Cable Modem	0.47	\$12.30
Dial-Up	4.91	\$16.12

Voice comprises the majority of the communications spending

Video a non-factor

# U.S. Business Telecom Spending



- These small firms, spending less than \$500 per month on telecom, constitute 80% of businesses.

Total U.S. by Estimated Monthly Telecom Spend Group						
	Businesses	Total Est Mthly Telecom Spend	Est Lines	Est Monthly Local Spend	Est Monthly LD Spend	Est Monthly Data Spend
\$0 - \$500	8,623,626	\$1,685,132,532	12,643,030	\$ 543,200,319	\$ 716,938,876	\$ 424,989,219
\$500 - \$1,500	1,288,337	\$1,120,974,338	8,468,881	\$ 332,414,583	\$ 497,315,600	\$ 291,243,296
\$1,500 - \$3,000	338,591	\$ 692,192,553	5,278,025	\$ 215,668,427	\$ 319,732,806	\$ 156,791,102
> \$3,000	373,405	\$3,797,005,752	35,054,495	\$1,232,353,566	\$1,987,326,256	\$ 577,325,685
Total	10,621,959	\$7,295,305,175	61,444,431	\$2,323,636,895	\$3,521,313,538	\$1,450,349,302

These businesses comprise 23% of all telecom spending

Average per Business - Total U.S.				
	Est Monthly Local Spend	Est Monthly LD Spend	Est Monthly Data Spend	Total Est Mthly Telecom Spend
\$0 - \$500	\$ 62.99	\$ 83.14	\$ 49.28	\$ 195.41
\$500 - \$1,500	\$ 258.02	\$ 386.01	\$ 226.06	\$ 870.09
\$1,500 - \$3,000	\$ 640.74	\$ 949.91	\$ 465.82	\$ 2,056.48
> \$3,000	\$ 3,300.31	\$ 5,322.17	\$ 1,546.11	\$ 10,168.60
Total	\$ 4,262.06	\$ 6,741.24	\$ 2,287.28	\$ 13,290.58

Voice is 75% of spend

# Mass Market Definition Must Not Preclude Competition for Small Businesses



- FCC Broadband Rules designed to promote deployment of facilities to residential consumers.
- Small businesses are not looking for ultra-high bandwidth streaming video products, simply want competitive options for voice and data.
- XO and other competitors find it economic in many markets to serve small businesses with as few as 4 to 5 lines.
- FCC's mass market definition should either confine mass market to residential only or to residential and business single line customers.